R.D. # 0002-00
Edison, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

EDISON EMS, INC., A JOINT VENTURE OF EDISON FIRST AID SQUAD NO. 1, EDISON FIRST AID SQUAD NO. 2, AND CLARA BARTON FIRST AID SQUAD[1]
Employer

and **CASE 22-RC-11868**

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO, AND ITS LOCAL 3997
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[2] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[1] The name of the Employer appears as amended at the hearing.
[2] Briefs filed by the parties have been duly considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein for the reasons described *infra*.
3. The labor organization involved claims to represent certain employees of the Employer.[3]
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.[4]
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

   All Emergency Medical Technicians (EMTs) employed by the Employer at its Edison, New Jersey facilities, excluding all office clerical employees, volunteer EMTs, professional employees, guards and supervisors as defined by the Act, and all other employees.[5]

The record reveals that the Employer, Edison EMS, Inc., is a joint venture comprised of three non-profit corporations, namely: Edison First Aid Squad No. 1,

[3] The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
[4] The parties agree that there is no contract or other bar to an election in this matter.
[5] There are approximately 12 employees in this unit.

Edison First Aid Squad No. 2 and Clara Barton First Aid Squad.[6] Operating out of three locations within the Township of Edison, New Jersey, the Employer provides emergency rescue services to the Township.[7] In this regard, the Employer provides ambulance, emergency medical services and other related services to residents and others located in the Edison, New Jersey area. The Employer and the Township of Edison are parties to a contract which governs the terms of their relationship.[8] This contract provides, *inter alia*, that the Employer will provide up to two ambulances with paid staff to supplement its voluntary staff members on Mondays through Fridays from 6:00 a.m. to 6:00 p.m. As payment for the services provided by the Employer, the Township of Edison deposits $125,000 per year into two separate payroll accounts administered by ADP Payroll Service, one for Squad No. 1 and one for Squad No. 2. ADP provides payroll services including the payment of wages to the paid staff of the Employer. The Township also donates approximately $35,000 annually to each of the three Employer squads. Other sources of revenue for the Employer are donations by individuals and corporations. The record does not describe the total revenue derived by the Employer.[9]

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[6] The Employer asserts that there is no entity named Edison EMS, Inc. which is a joint venture. However, it is undisputed that an entity named Edison EMS, Inc., described as a joint venture, entered into an agreement with the Township of Edison, New Jersey to provide emergency rescue services to the residents of the Township. It is further undisputed that responsible officials of each of the three corporations that comprise the Employer executed this agreement, which identifies the joint venture as Edison EMS, Inc. I find, therefore, that the Employer has been properly identified as Edison EMS, Inc.

[7] The distances among these locations are not described in the record.

[8] A copy of this agreement entitled Professional Services Agreement, which by its terms is effective from August 7, 1997 until December 31, 1997, was proffered into evidence. No successor agreements were proffered.

[9] The record discloses that Squad No. 1's operating budget for 1999-2000 is $243,140.

The record reveals that the Employer owns approximately 10 ambulances, 3 rescue vehicles and 1 boat which operate on a 24 hour, 7 day a week basis. The Employer staffs its operation with approximately 12 paid Emergency Medical Technicians, herein called EMTs, who work primarily during day-time hours. Six paid EMTs are currently assigned to Squad No.1, six others to squad No. 2 and none to Clara Barton. The remainder of its staff is comprised of unpaid, volunteer EMTs.[10]

The Employer's primary administrative governing body is a Board of Directors composed of the Presidents and Captains of each of the three first aid squads. The Board of Directors meets regularly to resolve such matters as staffing, supplies, operational needs and other general administrative matters. Additionally, the Board of Directors acts as a disciplinary review body in the event that it becomes necessary to institute a disciplinary action against a paid EMT. If the Township of Edison requests the termination of an EMT, the Board of Directors may also, in its discretion, act as the representative body for that EMT and advocate for his retention. The Board of Directors also addresses any complaints made against the Employer from persons other than its own membership and determines what action it will take to address such complaints.

Besides the Board of Directors, each of the Employer's three squads has its own supervisory structure consisting of line officers and executive officers. The line officers are responsible for the daily functioning of the ambulances; the executive officers represent the squads at the New Jersey First Aid Council. Each squad also has its own Constitution and by-laws. However, the record reveals that the provisions of each Constitution are substantially similar. While the EMTs within each squad

[10] There are approximately 153 unpaid, volunteer EMTs.

may be subject to the provisions of a particular Constitution, the Employer requires that all EMTs meet the State of New Jersey guidelines for EMTs. Moreover, the Employer administers common employment guidelines for EMTs pursuant to the Professional Services Agreement between it and the Township. In this regard, the Employer has agreed to employ EMTs that possess certain specified qualifications, such as State certification, driver's license and documented experience. The Agreement also serves as an outline for the services that the Employer will provide and the limitations of the Employer's liability, and provides that no employee of the Employer shall be an employee of the Township.[11]

The Employer contends that it is not subject to the jurisdiction of the National Labor Relations Board because it is a political subdivision of the Township within the meaning of Section 2(2) of the Act and therefore is not included under the Act's coverage. In determining whether an entity falls within the scope of the Section 2(2) exemption for "any State or political subdivision thereof," the entity must either be (1) created directly by the State so as to constitute a department or administrative arm of the government, or (2) administered by individuals who are responsible to public officials or to the general public. *Natural Gas Utility District of Hawkins County,* 167 NLRB 691(1967), enfd. 427 F.2d 312 (6th Cir. 1970), affd. as to applicable standard only, 402 U.S. 600 (1971). An entity does not become a creature of the State because the employees are paid by the city where this is merely a convenient method for transferring funds. *Minneapolis Society of Fine Arts,* 194 NLRB 371 (1972). In order to prove that individuals responsible to the general electorate administer the

[11] Article I (F) of the agreement.

entity, it must be shown that such individuals hold office because of a state requirement. *Fayetteville-Lincoln County Electric System*, 183 NLRB 101 (1970).

The record reveals that neither the Township of Edison nor any department thereof created the Employer nor appointed its Board of Directors. The Township may from time to time offer its advice and criticism to the Board of Directors, but the Board of Directors retains the primary control of daily administrative and employment functions within the squads. As reflected in the Professional Services Agreement, the Employer merely provides a service to the Township, which may be terminated by either party.

In *Management Training Corp*., 317 NLRB 1355 (1995), the Board held that in deciding whether to exercise jurisdiction over a private sector entity that works under contract with exempt governmental bodies, it will "only consider whether the employer meets the definition of 'employer' under Section 2(2) of the Act." This policy reversed the Board's previous practice of examining the relationship between the employer and the exempt governmental body to determine whether the employer "has sufficient control over the employment conditions of its employees to enable it to bargain with a labor organization as their representative." *National Transportation Service,* 240 NLRB 565 (1979); *Res-Care, Inc*., 280 NLRB 670 (1986).

Based upon the above, and the record as a whole, I find the Employer is not a political subdivision which is exempt under Section 2(2) of the Act. Rather, I find that the Employer meets the definitional requirements of an employer within the meaning of Section 2(2) of the Act. In this connection, the Employer's assertion that the Township is the employer of the paid EMTs is not supported by the record. Thus, the record discloses that the Employer hires, directs and supervises the employment

of the EMTs, not the Township. There is no evidence that the Township exercises any day to day control over the EMTs or in any way has an employment relationship with the EMTs.

The Employer also contends that it is not subject to the Board's jurisdiction because it does not meet the discretionary commerce standards which would affect commerce within the meaning of Section 2(6) and (7) of the Act.. As noted above, the record discloses that the Employer performs emergency rescue services for the Township of Edison. Therefore, the appropriate jurisdictional standard to be applied is the Board's nonretail standard. *Siemons Mailing Service*, 122 NLRB 81 (1959). The nonretail standard has been applied by the Board where services were provided directly to the consuming public but the cost of the services was paid for by a commercial enterprise. *Bob's Ambulance Service*, 178 NLRB 1 (1969); *Carroll-Naslund Disposal*, 152 NLRB 861 (1965). As described above, the Employer receives $125,000 annually from the Township for the services it renders pursuant to the Professional Services Agreement. The Township also donates $35,000 annually to each of the Employer's three squads. In these circumstances, I find that the Employer meets the Board's indirect outflow standard which refers to the sale of services within the State to users meeting any standard except solely an indirect inflow or indirect outflow standard (1958).[12] *Siemons Mailing Service*, supra; *Labor Relations Commission of Massachusetts,* 138 NLRB 381 (1962). It should be noted that for purposes of indirect outflow, as here, an exempt organization qualifies as a

[12] I take administrative notice that the Township of Edison, albeit an exempt entity under the Act, is directly engaged in interstate commerce.

"user" in the same manner and to the same degree as a non-exempt entity. *Peterein & Greenlee Construction Co.,* 172 NLRB 2110 (1968).

Based upon the above, I find that the Employer meets the Board's indirect outflow standard and is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

The Employer, contrary to the Petitioner, asserts that the three squads are separate and unrelated corporate entities that do not constitute a single employer. Accordingly, the Employer contends that there should be three separate bargaining units found here, one for each of the three first aid squads.

The term "single employer" applies to situations where apparently separate entities operate as an integrated enterprise in such a way that "…for all purposes, there is in fact only a single employer." *NLRB v. Browning-Ferris Industries,* 691 F.2d 1117 (3d Cir. 1982).

The Board examines four principal factors in determining whether separate entities constitute a single employer. These factors are: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations and (4) common ownership and financial control. *NLRB v. Browning-Ferris Industries, supra; Continental Radiator Corp*, 283 NLRB 234 at fn. 4 (1987). No one of the four criteria is controlling nor need all be present to warrant a single employer finding. *Blumenfeld Theaters Circuit,* 240 NLRB 206, 215 (1979); *Emsing's Supermarket*, 284 NLRB 302 (1987). The Board has stressed that the first three factors are more critical than common ownership, with particular emphasis on whether control of labor relations is centralized, as these tend to show "operational integration." *NLRB v. Al Bryant, Inc.*, 711 F.2d 543, 551 (3d Cir. 1983), and cases cited therein; *Airport Bus*

Service, 273 NLRB 561 (1984), disavowed on other grounds in *St. Marys Foundry Co.*, 284 NLRB 221 fn. 4 (1987). "[S]ingle employer status depends on all the circumstances of the case and is characterized by absence of an arm's length relationship found among unintegrated companies." *NLRB v. Al Bryant, Inc.,* supra; accord: *Hahn Motors*, 283 NLRB 901 (1983).

As discussed, *supra*, the Employer's administrative body is a Board of Directors comprised of top officers from each of its squads. The Employer imposes similar professional and operational guidelines upon all of its EMTs. The Employer, through the Professional Services Agreement, administers common terms and conditions of employment for EMTs employed at all three of its first aid squads. Paid EMTs at all three first aid squads receive the same salary and other benefits, which are determined by the Employer's Board of Directors.

Thus, based on all of the above, noting the absence of an arm's length relationship among the three entities, the high degree of interrelation among the entities, common management and the centralized control of labor relations, I find the three entities to be a single employer. *Hydrolines, Inc.,* 305 NLRB 416 (1991).

The Petitioner seeks to represent a unit of all full-time and regular part-time Emergency Medical Technicians (EMTs) employed by the Employer at its Edison, New Jersey facilities, excluding office clerical employees, volunteer EMTs, guards, and supervisors, as defined by the Act, and all other employees.[13] There are approximately 12 employees in this unit. The record reveals, and the parties agree, that the volunteer EMTs do not receive any compensation for their work.

[13] The record reveals that paid EMTs work 24 hours per week.

The Employer contends that the unit the Petitioner seeks to represent is improper because it consists of EMTs from all three first aid and rescue squads in a combined unit. The Employer takes the position that EMTs from the three squads must be separated into three different units as each squad is a separate corporate entity having no relationship with the other. I note that the Employer has not asserted that in the event that it is determined that it is a single employer, an employerwide unit is inappropriate. Rather, the Employer contends that an employerwide unit is improper here on the bases that it is neither the employer of the employees' sought nor is the Employer a single employer.

As noted above, and for the reasons previously described, I have determined that the Employer is the employer of the employees herein involved and that it is a single employer. Thus, when a union, as here, seeks a presumptively appropriate unit such as a single facility or an employerwide unit, it is the employer's burden to rebut the presumption. *Greenhorne & O'Mara, Inc.,* 326 NLRB No. 57 (1998) (employerwide unit presumptively appropriate). The Employer supports its position by noting that each squad has its own supervisory structure and has different and distinct colored uniforms. I find that these factors are insufficient to rebut the presumptively appropriate unit sought by the Petitioner. In this regard, the record reveals that all paid EMTs are required to purchase their own uniforms. Unlike volunteer EMTs, paid EMTs are not required to take an oath upon employment and are not required to attend monthly membership meetings. Additionally, the job requirements and responsibilities of paid EMTs are uniform and identical. The record further discloses that all paid EMTs rotate among each of the Employer's three rescue squads on a bi-weekly basis in accordance with established guidelines. EMTs are

supervised by supervisors who are based at the location at which the EMTs are working. Further, although a paid EMT may be designated as an employee of one particular squad, the supervisory structure of another squad may discipline the EMT. If disciplinary action is imposed on a paid EMT, such action is reviewed by the Employer's Board of Directors. Testimony revealed that, in addition to the bi-weekly rotation, oftentimes a shortage of coverage at one squad has caused a paid EMT at another squad to be temporarily transferred to the understaffed squad for the day. Additionally, all paid EMTs receive the same wage rate and work 24 hours per week. Based on the above, noting the substantial community of interests among the paid EMTs, I find that the presumption of an employerwide unit, as sought by the Petitioner, has not been overcome.[14] *Greenhorne & O'Mara, Inc.,* supra.

The Employer further contends that the unit the Petitioner seeks to represent is improper because it excludes volunteer EMTs. The Employer contends that volunteer EMTs should be included in any unit found appropriate herein because they share a community of interest with the paid EMTs. Before reaching the merits of the Employer's argument regarding a community of interest, it must first be determined whether the volunteer EMTs are employees within the meaning of Section 2(3) of the Act.

It is well established that in order to be classified as an employee within the meaning of Section 2(3) of the Act there must be an economic relationship between

[14] I have considered the evidence of community of interest factors present here such as the interchange of employees, common hours of work, method of payment of wages, benefits, supervision, contact among employees and similarities in training and skills. *Atlanta Hilton & Towers,* 273 NLRB 87 (1984), mod. on other grds. 275 NLRB 1413 (1985); *Moore Business Forms Inc.,* 173 NLRB 1133 (1968); *Doubleday & Co.,* 165 NLRB 325 (1967).

the employee and the employer. *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177(1941). In *WBAI Pacifica Foundation,* 328 NLRB No. 179 (1999), the Board found that unpaid workers are not employees within the meaning of Section 2(3) of the Act. In this regard, the Board echoed the Supreme Court decision in *Phelps Dodge*, stating that "[t]he ordinary meaning of employee does not include unpaid staff; unpaid staff do not work for another for hire… [t]o work for hire is to receive compensation for labor or services." Here, the record is clear that the volunteer EMTs receive no financial compensation from the Employer for the services they render. Thus, I find it unnecessary to reach the merits of the Employer's argument regarding a community of interest, as I have determined that the volunteer EMTs are not employees within the meaning of Section 2(3) of the Act and thus must be excluded from the bargaining unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to

vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Association of Firefighters, AFL-CIO, and its Local 3997.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company,* 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list, by location, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility,* 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102, on or before March 24, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by March 31, 2000.

Signed at Newark, New Jersey this 17th day of March 2000.

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